



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Ms. Gretchen Kuehn Bohnert
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR93-374

Dear Ms. Bohnert:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20334.

The City of Houston (the "city") has received a request for seven categories of information relating to the city's Employee Welfare Program. You advise us that the city has made most of the requested information available to the requestor. You have submitted to us for review, however, several documents and claim that the attorney work-product privilege and sections 3(a)(7) and 3(a)(11) of the Open Records Act except them from required public disclosure.

We address first your contention that the requested information is protected under the attorney work-product privilege. In Open Records Decision No. 429, this office held that protection under the attorney work-product privilege may exist only under section 3(a)(3), which protects information relating to pending or reasonably anticipated litigation to which the governmental body is a party, *see* Open Records Decision Nos. 575 at 2, 551 at 3-5 (1990). As you do not assert that any of the submitted information relates to litigation, you may not withhold it under the attorney work-product privilege.

You also claim that the submitted information is protected by section 3(a)(7), which excepts from required public disclosure:

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are

prohibited from disclosure, or which by order of a court are prohibited from disclosure. [Footnote omitted.]

V.T.C.S. art. 6252-17a, § 3(a)(7). In Open Records Decision No. 574 (1990), this office held that section 3(a)(7) protects information that reveals client confidences to an attorney or that reveals the attorney's legal advice to a client.

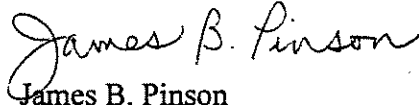
We have examined the documents submitted to us for review. We note that the city attorney addressed a letter to Dr. David H. Korfin, a member of the public. Because Dr. Korfin is not a client of the city, this letter does not fall within the attorney-client privilege of section 3(a)(7) and therefore may not be withheld from required public disclosure under that section of the Open Records Act. The remaining information submitted to us for review, however, reveals client confidences to an attorney or reveals the attorney's legal advice to a client and therefore may be withheld under section 3(a)(7).

You also claim that the documents submitted to us for review constitute "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, are excepted from public disclosure. For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, writ ref'd), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath* at 413. The court has since denied a motion for rehearing this case.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. We note, however, that the letters to Dr. Korfin do not appear to fall within the general scope of the section 3(a)(11) exception, notwithstanding the *Gilbreath* decision. Specifically, correspondence to Dr. Korfin does not on its face constitute "inter-agency or intra-agency memorandums or letters," nor have you demonstrated that the letter constitutes an "inter-agency or intra-agency memorandum[] or letter[]." We thus have no basis on which to conclude that this letter falls within the section 3(a)(11) exception. Accordingly, it must be released. The remaining information submitted to us for review may be withheld.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/GCK/jmn

Ref.: ID# 20334

cc: Mr. Louis Bonham
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